

3/12/12 (10)

**BOARD OF SELECTMEN AND SEWER COMMISSIONERS' MEETING
December 19, 2011**

**Acton Town Hall
Francis Faulkner Hearing Room
7:00 P.M.**

Present: Mr. Gowing, Ms. Harting-Barrat, Ms. Adachi, Mr. Sonner and Mr. Clough. Town Manager Steven Ledoux, Recording Secretary Christine Joyce. The meeting was televised.

CITIZENS' CONCERNS

None

CHAIRPERSON'S UPDATE

Mr. Gowing will be running for re-election next year. The analysis of employee health insurance plans will be re-done to include the school. The Board will be voting to close the annual Town Meeting Warrant, effective as of the close of business on December 30th.

OPERATIONAL MINUTE

Mr. Ledoux reported that bids were opened for the 6 Piper Road home and property. The only qualifying bidder was James Cullen, Guggins Road, Boxborough at \$215,555. Mr. Ledoux recommends that the Board accept this offer under the Consent Agenda. He was in arbitration all day today with the police union about the 2008 – 2010 period is ongoing.

PUBLIC HEARINGS & APPOINTMENTS

SITE PLAN #7/6/11-433 – POWDER MILL ROAD CONTINUED FROM 10/3

The applicant's engineer, Mark Donohoe, explained the proposed site plan. The Board has approved two previous plans for the site, with each successive plan being smaller. The proposed project involves 6400 ft² on a 224K ft² site. Proposal for essentially four garage bays with some office space. Original proposal was for auto repair, but change in aquifer district may be obstacle. Alternatively, proposal for machine shop. Ms. Harting-Barrat recommends that the Board take the proposal under advisement. She noted that the Engineering Department had flagged a number of issues that needed clarification: retaining wall, fire apparatus turning radius, the re-zoning of the area as Groundwater Zone 2, and prohibition of hazardous materials on site. She suggested that the applicant go back and discuss the various issues with the Engineering Department.

Mr. Bertolami said he was not inclined to continue the hearing. Mr. Gowing noted that Board members had a lot of questions yet unanswered and asked for input from Planning Director Roland Bartl. Mr. Bartl said the site will have to comply with Zone 2 requirements in the zoning

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bylaw, which the Acton Water District relies on to assure adequate protection. The hazardous material issue will be caught via the hazardous materials bylaw during the permitting review.

Mr. Bartl said it was the Board's decision whether to continue the hearing. He said the issues outstanding are things the Engineering Department found during review. He asked if the Board wanted to stay involved in the process or wanted want Town staff to work it out. Ms. Adachi said she had serious concerns about the same issues that Engineering kept coming back to, particularly the erosion-control at the top of a steep slope and stormwater management. If the applicant insisted on not continuing, she would have to vote to deny.

Chip Orcutt, resident and property manager for the owner of the abutting property, reviewed the issues he raised in his letter to the Selectmen, including the proposed use of the right-of-way, as well as the Engineering Department's issues, as to which there have been no answers.

Mr. Gowing asked if Board members had other issues that the applicants should address with Town staff. Ms. Adachi said the water supply for the building; emergency egress; septic system design, retaining wall stability, and other issues that Engineering could address. Mr. Clough said the applicants should respond to the issues that Town staff members have raised.

Mr. Gowing - Moved to continue to January 23 meeting at 7:30 in room 204, Mr. Sonner - second. UNANIMOUS VOTE

TOWN MANAGER WILL PRESENT HIS BUDGET

Mr. Ledoux said he had just learned that Police Chief Widmayer's father had died.

January 7th will be Budget Saturday, when the Town departments present their budgets and capital items. The Finance Committee will do a presentation on the OPEB (Other Post-Employment Benefits) issue. Every year there is a distracting issue in the budget process. Last year, it was the Caouette property; this year it has been Chapter 69.

Local Aid trend – when the economy tanked in 2009, local aid was cut, and the Town has not recovered from that.

Nursing Service – an enterprise fund, but due to diminishing revenues, is depleting reserves. Proposed funds to keep it going.

Transportation services – Grants for MinuteVan and Dial-A-Ride are winding down so budget includes funds to continue those services.

OPEB – proposed funds for that. The dark cloud hanging over. About \$61M.

AAA bond rating – maintained. A stable AAA as a result of a presentation to Moody's a couple of weeks ago.

Per capita expenditures in Acton and 13 comparable communities - Acton ranks #1 for General Government but that includes health insurance and pension, which in other communities are in fixed costs. Police is 11th, Fire 12th, Public Works last, Human Services 11th, Culture and Recreation 3d, Debt last, Fixed Costs (again deceptive because omits items that other towns include) in middle.

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Recommended budget: \$29,187,915. \$28M without subsidies and capital items, which is only 0.02% increase over last year. Without usual consensus-guidance from ALG.

Subsidies: 721K for Nursing, ambulance, COA

Transportation services: 246K

Capital items: Some will be bonded, some will be non-bonded, some will be within operating budget. At the "On the Hill" staff budget session in August, the original operating requests were almost 28M; original capital requests were almost 12M, with high priority items being 2.145M: one issue is how to move forward with capital items while also having budget that is affordable.

Revenues – heavily dependent on property tax, 76.5%.

Budget by function – Finance, assessor, collector, 38% is biggest item.

Budget by object – 2/3 of budget is personal services

Hope is that ALG consensus will become available, including on OPEB.

Ms. Adachi asked about the 600K for Land Use Management Department. Mr. Ledoux said it covers a permitting system and a number of other items that are in the budget book that will be distributed.

Allen Nitschelm expressed at the lack of a Town Manager recommendation about the level OPEB funding. Mr. Ledoux agreed that the Town should do something this year but the said the issue also involved the schools, so the funding amount would require consensus. The state now is looking at the issue and PERAC has asked municipalities for information on OPEB. Mr. Nitschelm asked whether the Segal report had recommended an amount of funding; Mr. Ledoux did not recall.

Charlie Kadlec confirmed that the budget presentation be on the Town website. He asked whether there was corresponding information on the amount of savings that would result from the proposed capital expenditures, for example, for trucks. Mr. Ledoux said the information should be in the departmental budget requests.

Dick Calandrella asked about the proposed 140K expenditure for the Senior Center, which he understood was underutilized. Mr. Gowing said that it was necessary to consider the fact that the senior population was the fastest-growing population in town. Mr. Calandrella said not all seniors used the senior center.

LIQUOR LICENSE REVOCATION/SUSPENSION HEARING, DANIELA'S TACORITO, 5 NAGOG PARK

Deputy Chief Parisi reported that on January 15, 2011 the Acton Police received a cell phone call reporting erratic vehicle operation on Main Street. Mr. Miranda was pursued and did not stop until he entered his driveway and hit a snow bank. He was arrested for operating under the influence as well as not stopping for a police officer.

Several weeks ago there was fight in the parking lot at Daniela's and an incident involving a man with a gun.

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Detective Rentschler – outlined the OUI incident. The officer located the vehicle reported via cellphone by a motorist. The officer flashed his lights but Mr. Miranda did not stop until he got in his driveway and hit the snow bank. The officer conducted a field sobriety test; Mr. Miranda failed and was arrested and charged with second OUI and refused the breath test.

Mr. Clough asked where Mr. Miranda had had his last drink. Mr. Gowing asked for further information regarding the handgun incident on August 26th. Officer McCarthy would testify if necessary. The police were called to the restaurant where a fistfight had started in the bar and continued outside where the gun was brandished. The officers tracked the license plate number to an address where they found the individual who had pulled out the gun in the Daniela's parking lot. The police took that gun and another gun.

The Board discussed the various issues, including the problem of over-serving. Mr. Gowing said the matter was disturbing and asked how Mr. Miranda could control over-serving in his business if he himself was intoxicated. Mr. Gowing emphasized that this is an issue of town safety.

Ms. Harting-Barrat spoke about Mr. Miranda's history of over-serving at his establishments. He was lucky that no accident happened that night. It is more troublesome as he is the manager and owner. She does not feel he should be allowed to serve liquor.

Ms. Adachi said that Mr. Miranda was not a good model for his employees. The liquor license is a privilege and she would have difficulty allowing him to keep the license without significant changes.

Ms. Harting-Barrat asked how long the suspension of Mr. Miranda's driver's license would be: five years.

Mr. Sonner said it does not make any sense to renew the license under these conditions.

Mr. Clough noted that he had been at the restaurant and wondered whether there was a way to monitor the situation at the restaurant.

Ms. Harting-Barrat said Mr. Miranda as the owner of the establishment was abusing alcohol in front of his employees.

Mr. Sonner – Moved to suspend the license immediately through the end of the year.

Mr. Miranda and his accountant announced that they are in the process of selling the restaurant

Doug Tindal expressed concern about the potential negative impact at Nagog Park of another vacant business space.

Mr. Clough – Moved to suspend the Liquor License through the end of this year.

Mr. Clough – Moved to suspend the liquor license immediately to end of the year and not renew it for 2012 for this owner. Ms. Adachi – second. Vote 3-2 (Nay - Mr. Gowing and Ms. Harting-Barrat). Motion Passes.

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TAX CLASSIFICATION HEARING CONTINUED FROM 12/5/11

Brian McMullen presented the four decisions to be made by the Board of Selectmen.

Ms. Harting-Barrat – Moved to set the Residential Factor of 1 no shift - \$18.55. Ms. Adachi – second. UNANIMOUS VOTE

Factor shift to Commercial - NA

Mr. Clough- Moved Not to Grant an Open Space Discount. Ms. Harting-Barrat – second. UNANIMOUS VOTE

Ms. Adachi – Moved not to Adopt Small Commercial Exemption. Mr. Sonner – second. UNANIMOUS VOTE

Mr. McMullen said that the Selectmen's approval resulted in excess levy capacity of about 520K.

SELECTMEN'S BUSINESS

REMOTE PARTICIPATION RULING – CONTINUED DISCUSSION

The Board discussed whether to accept the new Open Meeting Law regulations allowing municipal board members to participate in meetings remotely. Ms. Harting-Barrat - Moved to accept OML Regulation as amended tonight. Mr. Sonner – second UNANIMOUS VOTE

Mr. Clough asked how to assure consistency among Town boards in implementing the regulations, for example, if a board wanted to restrict member use of remote participation. Mr. Gowing said the Board could require Board approval of any standard that goes beyond what the Board adopts. Mr. Sonner asked about the technical capacity for remote participation Town buildings, and whether the quality would be consistent. Room 204 at Town Hall obviously is set up. Mr. Sonner also wanted to be sure that the Town would provide the conference number that people could use, but would not pay for the calls. He also recommended audio only, not video at this time. Ms. Adachi noted the need to develop a set of guidelines regarding the Board's preferences with respect to options in the regulations, for example, audio but not video. She noted the lack of explanation for the "personal disability" exemption, which seemed to mean a people unable to attend meetings due to disability. Mr. Gowing said, for example, a person using a wheelchair who was unable to get transportation. Ms. Adachi added that the "personal illness" exemption applied only if the member was ill and not if the member had to stay home with children. Ms. Harting-Barrat said the regulations did not address staying home with children, which might mean that was permissible; the regulations could be confusing and needed clarification.

Mr. Gowing said that once the Board has developed guidelines, they should go to all boards and committees. Mr. Gowing will draft guidelines for the Board to review.

Dick Calandrella asked whether the remote participant would count toward a quorum. Mr. Gowing and Mr. Ledoux said no, but the remote participant could vote.

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Mr. Clough asked whether boards could start using remote participation. Mr. Gowing said not yet.

APPOINTMENT OF THE TOWN ACCOUNTANT

The Town Manager said that the Town had offered the Town Accountant position to another candidate who had accepted and then been injured in an accident and unable to start in a timely manner while she recuperated. Mr. Ledoux recommended appointment of Joseph Tassone of Woburn. Mr. Tassone's work experience includes a stint at the Department of Revenue, and serving as Town Accountant in a number of other towns. Ms. Harting-Barrat – Moved to appoint Mr. Tassone as Town Accountant. Mr. Sonner – second. UNANIMOUS VOTE

CONFIDENTIAL REQUEST, APPROVAL OF A LIP OWNED PROPERTY TO REFINANCE A MORTGAGE

Ms. Adachi – Moved to approve. Ms. Harting-Barrat - second. UNANIMOUS VOTE

SELECTMEN'S REPORTS

Mr. Sonner – TAC pursuing a grant. Sidewalk Committee reviewing tiering of sidewalks and moved one, Stow Street, into Tier 2. Mr. Sonner asked whether the topic of unfunded liabilities will be a topic at the January 7th budget meeting. Mr. Ledoux affirmed.

Mr. Clough – Finance Committee has issued its point-of-view document regarding Town issues and is developing a long-range-planning document that will be very useful. The Historical Commission needs help with scanning files. Design Review Board will be asking to come before the Board. The Economic Development Committee has spent time rewriting the sign bylaw.

Mr. Gowing said there had been a delay in the meeting of the EDC and HDC to discuss signage regulations in the Historic Districts. He reported on the ALG meeting, the agreement to include a line item for OPEB every year, perhaps start with 500K, and tax to the maximum. Minuteman Tech amended the capital-share program to be based on assessing enrollment.

Ms. Harting-Barrat – Planning Board gave the Village Arms Apartments owners, who purchased the property two years ago, 60 days to clean up the site, with rebuilding to take place in the spring; proposal to move the CVS near Roche Brothers across the street near the Goodyear business, in order to create a freestanding building with two drive-thrus; her concern is that allowing the CVS drive-thrus will cause other pharmacies to want them. This would require a bylaw change.

Ms. Adachi - Acton Boxborough Cultural Council making grant decisions. Acton Water District looking at capital investment in South Acton wells. Conservation Commission had presentation and discussion about Hybrid Farm Issue. Community Preservation Committee met on 12/8 and heard a presentation about the open-space set-aside request. The Land Steward Committee will be speaking the Chairman. The stormwater bylaw that the Water Resources Advisory Committee is drafting will not be on the 2012 warrant. The Health Insurance Working Group is meeting weekly and discussion has been very pleasant. She, Mr. Gowing and Ms. Harting-Barrat attended a MAGIC breakfast meeting in Lexington on 12/9.

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CONSENT

6 Piper Road –Hold by John Sonner. Question about time constraint on bid consideration. Mr. Ledoux answered.

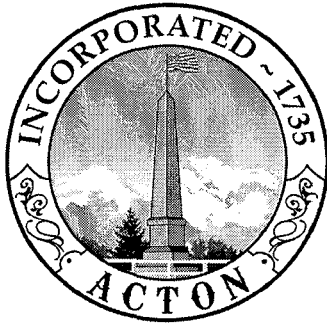
Ms. Adachi – Moved to approve. Ms. Harting Barrat – second. UNANIMOUS VOTE

Move to adjourn 10:45 p.m.

Christine Joyce, Recording Secretary

Janet K. Adachi, Clerk

Date:_____



TOWN CLERK

3/12/12 (11)
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February 22, 2012

Board of Selectmen
Town Manager


Re: Appointment to the Board of Registrars

I would like to request the Board of Selectmen to re-appoint Margaret Brandon to the Board of Registrars of Voters, Term to expire 2015.

The current board members are:

Name	Political Party	Term to expire
Deena A. Ferrara	Democratic	2013
Katherine F. Arnold	Republican	2014
<i>Margaret Brandon</i>	<i>Republican</i>	<i>2012</i>

Thank you


Eva K. Szkaradek
Town Clerk